

106TH CONGRESS
1ST SESSION

H. R. 1921

To provide that the provision of the Fair Labor Standards Act of 1938 on the accounting of tips in determining the wage of tipped employees shall preempt any State or local provision precluding a tip credit or requiring a tip credit less than the tip credit provided under such Act and to amend the Internal Revenue Code of 1986 to provide that tips received for certain services shall not be subject to income or employment taxes.

IN THE HOUSE OF REPRESENTATIVES

MAY 25, 1999

Mr. BILBRAY (for himself and Mr. McKEON, Mr. CAMPBELL, Mr. COX, and Mr. EHRLICH) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide that the provision of the Fair Labor Standards Act of 1938 on the accounting of tips in determining the wage of tipped employees shall preempt any State or local provision precluding a tip credit or requiring a tip credit less than the tip credit provided under such Act and to amend the Internal Revenue Code of 1986 to provide that tips received for certain services shall not be subject to income or employment taxes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Tip Credit Protection
 5 Act of 1999”.

6 **SEC. 2. PREEMPTION.**

7 Section 18 of the Fair Labor Standards Act of 1938
 8 (29 U.S.C. 218) is amended by adding at the end the fol-
 9 lowing:

10 “(c) No law, ordinance, regulation, or order estab-
 11 lished or enforced by a State or political subdivision of
 12 a State shall—

13 “(1) preclude a tip credit, or

14 “(2) prohibit an employer from applying a tip
 15 credit,

16 as authorized by section 3(m) if the employer pays cash
 17 wages to tipped employees that are not less than the min-
 18 imum cash wage required by such law, ordinance, regula-
 19 tion, or order of a State or political subdivision of a State
 20 on the date of the enactment of this subsection.”.

21 **SEC. 3. TIPS RECEIVED FOR CERTAIN SERVICES NOT SUB-**
 22 **JECT TO INCOME OR EMPLOYMENT TAXES.**

23 (a) IN GENERAL.—Section 102 of the Internal Rev-
 24 enue Code of 1986 (relating to gifts and inheritances) is

1 amended by adding at the end the following new sub-
2 section:

3 “(d) TIPS RECEIVED FOR CERTAIN SERVICES.—

4 “(1) IN GENERAL.—For purposes of subsection
5 (a), tips received by an individual for qualified serv-
6 ices performed by such individual shall be treated as
7 property transferred by gift.

8 “(2) QUALIFIED SERVICES.—For purposes of
9 this subsection, the term ‘qualified services’ means
10 cosmetology, hospitality (including lodging and food
11 and beverage services), recreation, taxi, newspaper
12 deliveries and shoe shine services.

13 “(3) ANNUAL LIMIT.—The amount excluded
14 from gross income for the taxable year by reason of
15 paragraph (1) with respect to each service provider
16 shall not exceed \$10,000.

17 “(4) EMPLOYEE TAXABLE ON AT LEAST MIN-
18 IMUM WAGE.—Paragraph (1) shall not apply to tips
19 received by an employee during any month to the ex-
20 tent that such tips—

21 “(A) are deemed to have been paid by the
22 employer to the employee pursuant to section
23 3121(q) (without regard to whether such tips
24 are reported under section 6053), and

25 “(B) do not exceed the excess of—

1 “(i) the minimum wage rate applica-
2 ble to such individual under section 6(a)(1)
3 of the Fair Labor Standards Act of 1938
4 (determined without regard to section 3(m)
5 of such Act), over

6 “(ii) the amount of the wages (exclud-
7 ing tips) paid by the employer to the em-
8 ployee during such month.

9 “(5) TIPS.—For purposes of this title, the term
10 ‘tips’ means a gratuity paid by an individual for
11 services performed for such individual (or for a
12 group which includes such individual) by another in-
13 dividual if such services are not provided pursuant
14 to an employment or similar contractual relationship
15 between such individuals.”

16 (b) EXCLUSION FROM SOCIAL SECURITY TAXES.—

17 (1) Paragraph (12) of section 3121(a) of such
18 Code is amended to read as follows:

19 “(12)(A) tips paid in any medium other than
20 cash;

21 “(B) cash tips received by an employee in any
22 calendar month in the course of his employment by
23 an employer unless the amount of such cash tips is
24 \$20 or more and then only to the extent includible

1 in gross income after the application of section
2 102(d);”.

3 (2) Paragraph (10) of section 209(a) of the So-
4 cial Security Act is amended to read as follows:

5 “(10)(A) tips paid in any medium other than
6 cash;

7 “(B) cash tips received by an employee in any
8 calendar month in the course of his employment by
9 an employer unless the amount of such cash tips is
10 \$20 or more and then only to the extent includible
11 in gross income after the application of section
12 102(d) of the Internal Revenue Code of 1986 for
13 such month;”.

14 (3) Paragraph (3) of section 3231(e) of such
15 Code is amended to read as follows:

16 “(3) Solely for purposes of the taxes imposed
17 by section 3201 and other provisions of this chapter
18 insofar as they relate to such taxes, the term ‘com-
19 pensation’ also includes cash tips received by an em-
20 ployee in any calendar month in the course of his
21 employment by an employer if the amount of such
22 cash tips is \$20 or more and then only to the extent
23 includible in gross income after the application of
24 section 102(d).”.

1 (c) EXCLUSION FROM UNEMPLOYMENT COMPENSA-
2 TION TAXES.—Subsection (s) of section 3306 of such
3 Code is amended to read as follows:

4 “(s) TIPS NOT TREATED AS WAGES.—For purposes
5 of this chapter, the term ‘wages’ shall include tips received
6 in any month only to the extent includible in gross income
7 after the application of section 102(d) for such month.”

8 (d) EXCLUSION FROM WAGE WITHHOLDING.—Para-
9 graph (16) of section 3401(a) of such Code is amended
10 to read as follows:

11 “(16)(A) as tips in any medium other than
12 cash;

13 “(B) as cash tips to an employee in any cal-
14 endar month in the course of his employment by an
15 employer unless the amount of such cash tips is \$20
16 or more and then only to the extent includible in
17 gross income after the application of section
18 102(d);”

19 (e) CONFORMING AMENDMENT.—Sections
20 32(c)(2)(A)(i) and 220(b)(4)(A) of such Code are each
21 amended by striking “tips” and inserting “tips to the ex-
22 tent includible in gross income after the application of sec-
23 tion 102(d))”.

24 (f) EFFECTIVE DATE.—The amendments made by
25 this section shall apply to tips received after the calendar

1 month which includes the date of the enactment of this
2 Act.

